

1. Plaintiffs refuse to provide disclosures for their expert witnesses they intend to call at the hearing on the Preliminary Injunction in compliance with Fed. R. Civ. P. 26(a)(2), with the exception of providing *curricula vitae*, billing rates and lists of prior testimony.
2. Plaintiffs object to Defendant Tyson Foods' Rule 34 requests for the production of the experts' files and all materials considered by each expert, agreeing only to provide Defendants with the documents the experts "relied upon" in a rolling production over the course of the next 2 ½ weeks. Hence, Plaintiffs refuse to produce the entire files of their experts as contemplated under Fed. R. 26.
3. Although Plaintiffs will not state it plainly, their proposal for producing even limited documents about their expert case shows that the schedule Plaintiffs have proposed to this Court is unworkable. Plaintiffs' proposed schedule for producing the "reliance" materials of their experts extends past the date Plaintiffs assert the Defendants should file their Responses to the Motion for Preliminary Injunction.
4. Plaintiffs expect Defendants to file their Responses and supporting rebuttal expert affidavits: (1) before Plaintiffs have completed the production of their expert "reliance" materials; and (2) before Defendants are afforded the opportunity to evaluate the basis for Plaintiffs' experts' opinions and depose the experts.
5. Yet, under Plaintiffs' proposed schedule, Plaintiffs reserve for themselves the right and opportunity to take the depositions of the Defendants' experts prior to preparing and filing Plaintiffs' Reply in support of their Motion.

In the conference, Defendants' counsel expressed that they cannot agree to modify the schedule they proposed in their *Motion to Strike or Extend Response Deadline and for*

Establishment of Schedule for Resolving Plaintiffs' Motion for Preliminary Injunction, [Dkt. 1380] without a firm commitment from Plaintiffs' counsel that they will make a full disclosure of their experts' materials and commit to a date certain for production. As explained above, the Plaintiffs' counsel rejected these requests and left Defendants' counsel with no greater understanding of what documents and information Plaintiffs have to support their Motion. As a result, Defendants have no greater understanding of what work will be required to rebut the Plaintiffs' Motion than they had the day it was filed.

However, the discussion at the meet-and-confer did clarify that the schedule for proceeding will necessarily have to account for Defendants' need for the Court to resolve the critical discovery issue as to the discoverability of Plaintiffs' experts' materials before the expert phase of the process can begin in earnest. Plaintiffs flatly refused to expedite their own Motion by producing the required expert materials until compelled to do so by the Court.

In the discussion, Plaintiffs' counsel rejected each of the Defendants' proposed schedule dates. Plaintiffs did agree to set the hearing on the Motion in mid-February 2008, which had the potential of moving the schedule a week or two at the most, given Plaintiffs' plan for the discovery phase to continue to January 15, 2008.

Defendants' proposed schedule is supported on its face by the timing of Plaintiffs' filing. Having presumably worked this case up before filing the Complaint in June of 2005, and having complete control over their case in the 28 months since, Plaintiffs filed their Motion for Preliminary Injunction in mid-November for the strategic purpose of creating a scheduling crisis that would work to Defendants' prejudice founded upon the conjecture that a human health crisis is looming in the spring of 2008. This claim flies in the face of fact that no public health official or environmental regulator in Oklahoma has stepped up to support that any such circumstance or

emergency exists. Indeed, in their recent discovery responses, Plaintiffs have admitted that they have no evidence of a single person ever becoming ill or suffering adverse health effects from poultry litter. *See* Pls.' Mar. 16, 2007 Supplemental Resp. to Simmons Interrog. No. 5: "At the present time, the State has not confirmed the identity of any person who has suffered adverse health effects traceable to water contact in the Illinois River Watershed caused by land application of poultry waste."

The facts and issues related to the Plaintiffs' and Defendants' proposed schedules are discussed in detail in two documents filed on Wednesday, December 5, 2008. As explained more fully in the *Cargill Defendants' Reply in Support of Defendants' Motion to Strike* [Dkt. No. 1393] and *Defendants' Reply on Their Motion to Strike or Extend Response Deadline and for Establishment of Schedule for Resolving Plaintiffs' Motion for Preliminary Injunction* [Dkt. No. 1394], the needs of justice will be served only if Defendants are afforded adequate time and due process to meet Plaintiffs' Motion, which seeks to radically alter the status quo and the lives of virtually thousands of Oklahomans and Arkansans. Accordingly, Defendants re-urge the schedule they proposed in their prior filing [Dkt. No. 1380] as follows:

Plaintiffs' Disclosure of Rule 26(a)(2)(B) Information:	Immediately
Plaintiffs' production of Documents Requested in	
Tyson Foods Rule 34 Requests:	December 17, 2007
Depositions of Plaintiffs' Experts:	Prior to March 1, 2008
Defendants' Response Briefs	March 13, 2008
Defendants' Expert Reports (with Rule 26(a)(2)(B)	
Information):	March 13, 2008
Written Discovery and Depositions of Defendants' Experts:	Prior to April 14, 2008

Plaintiffs' Reply Brief:	April 28, 2008
Exchange of Hearing Witness Lists and Exhibits:	May 7, 2008
Evidentiary Hearing (2 weeks)	After May 14, 2008

In support of Defendants' scheduling proposal and for further discussion of the prejudice that Defendants would suffer under Plaintiffs' proposed schedule, Defendants refer the Court to and incorporate herein the following filings in the Court's record:

- *Defendants' Response in Opposition to Motion for Hearing*, [Dkt. No. 1379];
- *Defendants' Motion to Strike or Extend Response Deadline and for Establishment of Schedule for Resolving Plaintiffs' Motion for Preliminary Injunction*, [Dkt. No. 1380];
- *The Cargill Defendants' Reply in Support of Defendants' Motion to Strike or Extend Response Deadline*, [Dkt. No. 1393]; and
- *Defendants' Reply on Their Motion to Strike or Extend Response Deadline and for Establishment of Schedule for Resolving Plaintiffs' Motion for Preliminary Injunction*, [Dkt. No. 1394].

Respectfully submitted,

BY: /s/ A. Scott McDaniel

A. SCOTT McDANIEL, OBA # 16460
NICOLE M. LONGWELL, OBA #18771
PHILIP D. HIXON, OBA #19121
McDANIEL, HIXON, LONGWELL &
ACORD, PLLC
320 South Boston Ave., Suite 700
Tulsa, Oklahoma 74103
Telephone: (918) 382-9200
Facsimile: (918) 382-9282
E-Mail: smcdaniel@mhla-law.com

-and-

Sherry P. Bartley (Ark. Bar No. 79009)
Appearing Pro Hac Vice
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.
425 W. Capitol Ave., Suite 1800
Little Rock, Arkansas 72201
Telephone: (501) 688-8800
ATTORNEYS FOR PETERSON FARMS, INC.

BY: /s/ Robert W. George

(SIGNED BY FILING ATTORNEY WITH
PERMISSION)

ROBERT W. GEORGE, OBA #18562
MICHAEL R. BOND
ERIN WALKER THOMPSON
KUTAK ROCK LLP
The Three Sisters Building
214 West Dickson Street
Fayetteville, AR 72701-5221

-and-

STEPHEN L. JANTZEN, OBA #16247
PATRICK M. RYAN, OBA #7864
PAULA BUCHWALD, OBA # 20464
RYAN, WHALEY & COLDIRON, P.C.
119 North Robinson
900 Robinson Renaissance
Oklahoma City, OK 73102

-and-

THOMAS C. GREEN, ESQ.
MARK D. HOPSON, ESQ.

TIMOTHY K. WEBSTER, ESQ.
JAY T. JORGENSEN, ESQ.
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005-1401
**ATTORNEYS FOR TYSON FOODS, INC.; TYSON
POULTRY, INC.; TYSON CHICKEN, INC.; AND
COBB-VANTRESS, INC.**

BY: /s/ John H. Tucker
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
THERESA NOBLE HILL, OBA #19119
JOHN H. TUCKER, OBA #9110
COLIN H. TUCKER, OBA #16325
RHODES, HIERONYMUS, JONES,
TUCKER & GABLE
P. O. BOX 21100
100 WEST 5TH STREET, SUITE 400
Tulsa, OK 74121-1100
**ATTORNEYS FOR CARGILL, INC., and CARGILL
TURKEY PRODUCTION, LLC**

BY: /s/ R. Thomas Lay
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
R. THOMAS LAY, OBA #5297
KERR, IRVINE, RHODES & ABLES
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, OK 73102
ATTORNEYS FOR WILLOW BROOK FOODS, INC.

BY: /s/ Randall E. Rose
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
RANDALL E. ROSE, OBA #7753
GEORGE W. OWENS, ESQ.
OWENS LAW FIRM, P.C.
234 W. 13th Street
Tulsa, OK 74119
**ATTORNEYS FOR GEORGE'S, INC. AND
GEORGE'S FARMS, INC.**

BY: /s/ John R. Elrod
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
JOHN R. ELROD, ESQ.
VICKI BRONSON, OBA #20574
CONNER & WINTERS, LLP
211 E. Dickson Street
Fayetteville, AR 72701
ATTORNEYS FOR SIMMONS FOODS, INC.

BY: /s/ Robert P. Redemann
(SIGNED BY FILING ATTORNEY WITH
PERMISSION)
ROBERT P. REDEMANN, OBA #7454
LAWRENCE W. ZERINGUE, OBA #9996
DAVID C. SENGGER, OBA #18830
PERRINE, MCGIVERN, REDEMANN, REID, BERRY &
TAYLOR, P.L.L.C.
P. O. BOX 1710
Tulsa, OK 74101-1710
**ATTORNEYS FOR CAL-MAINE FARMS, INC. AND
CAL-MAINE FOODS, INC.**

CERTIFICATE OF SERVICE

I certify that on the 6th day of December 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Tina L. Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Daniel Lennington, Assistant Attorney General	daniel.lennington@oak.ok.gov

Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
-------------------	--------------------

Louis W. Bullock	lbullock@bullock-blakemore.com
------------------	--------------------------------

David P. Page	dpage@edbelllaw.com
Bell Legal Group	

Michael G. Rousseau	mrousseau@motleyrice.com
Jonathan D. Orent	jorent@motleyrice.com
Fidelma L. Fitzpatrick	ffitzpatrick@motleyrice.com
Motley Rice LLC	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com
Motley Rice	

COUNSEL FOR PLAINTIFFS

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Sidley Austin LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com

Robert W. George
Michael R. Bond
Erin Walker Thompson
Kutak Rock LLP

robert.george@kutakrock.com
michael.bond@kutakrock.com
erin.thompson@kutakrock.com

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.;
AND COBB-VANTRESS, INC.**

R. Thomas Lay
Kerr, Irvine, Rhodes & Ables

rtl@kiralaw.com

Jennifer S. Griffin
Lathrop & Gage, L.C.

jgriffin@lathropgage.com

COUNSEL FOR WILLOW BROOK FOODS, INC.

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E. Sanders
E. Stephen Williams
Young Williams P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.

George W. Owens
Randall E. Rose
The Owens Law Firm, P.C.

gwo@owenslawfirmmpc.com
rer@owenslawfirmmpc.com

James M. Graves
Gary V. Weeks
Paul E. Thompson, Jr.
Bassett Law Firm

jgraves@bassettlawfirm.com
pthompson@bassettlawfirm.com

COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.

John R. Elrod
Vicki Bronson
P. Joshua Wisley
Conner & Winters, P.C.

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com

Bruce W. Freeman
D. Richard Funk
Conner & Winters, LLLP

bfreeman@cwlaw.com

COUNSEL FOR SIMMONS FOODS, INC.

John H. Tucker
Leslie J. Southerland
Colin H. Tucker
Theresa Noble Hill
Rhodes, Hieronymus, Jones, Tucker & Gable

jtuckercourts@rhodesokla.com
ljsoutherlandcourts@rhodesokla.com
chtucker@rhodesokla.com
thillcourts@rhodesokla.com

Terry W. West
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann Kleibacker Lee
Dara D. Mann
Todd P. Walker
Faegre & Benson LLP

dehrich@faegre.com
bjones@faegre.com
kklee@baegre.com
dmann@faegre.com
twalker@faegre.com

COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC

Michael D. Graves
D. Kenyon Williams, Jr.
COUNSEL FOR POULTRY GROWERS

mgraves@hallestill.com
kwilliams@hallestill.com

William B. Federman
Jennifer F. Sherrill
Federman & Sherwood

wfederman@aol.com
jfs@federmanlaw.com

Charles Moulton
Jim DePriest
Office of the Attorney General

charles.moulton@arkansag.gov
jim.depriest@arkansasag.gov

COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION

Carrie Griffith
COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON

griffithlawoffice@yahoo.com

Gary S. Chilton
Holladay, Chilton & Degiusti, PLLC

gchilton@hcdattorneys.com

Victor E. Schwartz
Cary Silverman
Shook, Hardy & Bacon, LLP

vschwartz@shb.com
csilverman@shb.com

Robin S. Conrad
National Chamber Litigation Center, Inc.

rconrad@uschamber.com

COUNSEL FOR AMICI CURIAE CHAMBER OF COMMERCE FOR THE U.S. AND THE AMERICAN TORT REFORM ASSOCIATION

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 North Classen
Oklahoma City, OK 73118
COUNSEL FOR PLAINTIFFS

Thomas C. Green
Sidley Austin Brown & Wood LLP
1501 K Street NW
Washington, DC 20005
**COUNSEL FOR TYSON FOODS, INC.,
TYSON POULTRY, INC., TYSON
CHICKEN, INC.; AND COBB-VANTRESS,
INC.**

Dustin McDaniel
Justin Allen
Office of the Attorney General of Arkansas
323 Center Street, Suite 200
Little Rock, AR 72201-2610
**COUNSEL FOR THE STATE OF
ARKANSAS AND THE ARKANSAS
NATURAL RESOURCES COMMISSION**

A. Scott McDaniel